IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24263 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RIYAZUDDIN VALIUDDIN SHAIKH - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1
MR LR POOJARI, AGP for Respondents No.1-3
MR M IA SHAIKH for Respondent No. 4

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 02/02/2006

ORAL JUDGMENT

1. Riyazuddin Valiuddin Shaikh, petitioner, has filed this petition under Article 226 of the Constitution of India with a prayer that this Court may issue a writ of habeas corpus or any other appropriate writ, order or

direction, for quashing and setting aside the order of detention dated 9.12.2005, passed by the District Magistrate, Ahmedabad - respondent No.2 detaining authority under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as “PBM Act”) as being illegal, invalid, null and void, suffers from total non-application of mind and violative of Articles 14, 21 and 22 of the Constitution of India. The petition was filed on 28th September, 2005.

2. When the matter was placed for hearing before this Court on 20.12.2005 this Court has issued Rule, the same was made returnable on 10.1.2006.

3. After the Rule has been issued, Mr.L.R.Poojari, learned AGP appears on behalf of the respondents No.1 to 3. He has filed the affidavit of Shri D.Thara, District Magistrate dated 25.1.2006 and also affidavit of Shri H.C.Kadia, Deputy Secretary dated 24.1.2006 filed on behalf of respondent No.1.

4. Mr.H.R.Prajapati, learned advocate for the petitioner stated that though there are several grounds

urged in this matter, however, he confines his argument to only one ground namely certain documents supplies along with the detention order are partly illegible. He has invited my attention to page 73 which is the order of regular bail granted by the Metropolitan Magistrate. The said application was filed on 27.8.2005 and the learned Magistrate passed the order giving bail. The respondent has produced the copy of the original order which itself is not legible and this ground he has taken in para 4(g) of the petition and submitted that the supply of illegible documents would amount to non communication of grounds of detention and therefore the continued detention of the petitioner has become violative of Article 22(5) of the Constitution of India.

5. Mr.Prajapati, learned advocate for the petitioner has relied on the judgment of this Court in Special Civil Application No.24229 of 2005 decided on 27.1.2006 where this Court (Coram: K.M.Mehta, J.) after referring the judgments of Hon'ble Supreme Court, has held that if the detaining authority supplied illegible documents than on that ground the petition is to be allowed and the detention order is required to be quashed and set aside on that ground.

6. Learned advocate for the petitioner has stated that on 16.12.2005 the petitioner has asked for legible copy to the District Magistrate which is on page 25 and particularly para 15 of the representation the petitioner requested that the bail order at page 73 is not legible and therefore the legible copy of the said order shall be supplied to the detenu in jail. However the authority has replied the said letter rejecting the contention of the petitioner. In fact I have shown page 73 to learned AGP Mr.Poojari in this behalf and he has also conceded that the document which has been referred to is illegible document. In view of the judgment of this Court in Special Civil Application No.24429 of 2005 in the matter of Kantilal Mathudas Dave Vs. State of Gujarat and others decided on 27.1.2006, the petition is required to be allowed in this behalf.

7. For the foregoing reasons, the petition is allowed. The impugned order dated 9.12.2005 passed by the respondent No.2 authority is quashed and set aside. The detenu-Riyazuddin Valiuddin Shaikh is ordered to be set at liberty forthwith unless required in any other case. Rule is made absolute. Direct service is permitted.

(K.M. Mehta, J.)

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